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Electronic Filing

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re:    **Certification of CPNI Filing**  
          **EB-06-TC-060**  
          **EB Docket No. 06-36**  
          **Choctaw Telephone Company**  
          **Electra Telephone Company**  
          **Haxtun Telephone Company**  
          **MoKan Dial, Inc.**  
          **MoKan Communications, Inc.**  
          **Northeast Florida Telephone Company**  
          **NEFCOM Long Distance d/b/a NEFCOM Communications**  
          **Tatum Telephone Company**  
          **Walnut Hill Telephone Company**

Dear Ms. Dortch:

The above-referenced companies of Townes Telecommunications, Inc, by their attorneys, hereby submit their CPNI certification and statement entitled "Townes Telecommunications, Inc. Customer Proprietary Network Information (CPNI) Policy Manual," pursuant to Section 64.2009(e) of the Commission's Rules and in accordance with the Commission's Public Notices dated January 30, 2006 and February 2, 2006. Only one copy of the CPNI Policy Manual is being submitted, as the same manual applies to all of the companies.

Please contact me if you have any questions concerning this filing.

Sincerely,

/s/ Mary J. Sisak

Benjamin H. Dickens, Jr.

Mary J. Sisak

cc: Byron McCoy  
Best Copy and Printing

# **CERTIFICATION OF CPNI FILING**

**FEBRUARY 6, 2006**

**[Section 64-2009(e) of FCC Rules]**

**EB-06-TC-060**

**EB DOCKET NO. 06-36**

I, Deborah Nobles, Vice President of Regulatory Affairs, am a corporate officer of Choctaw Telephone Company. Pursuant to 47 CFR, Part 64.2009(e), I hereby state I am responsible for Choctaw Telephone Company's compliance with the FCC's CPNI rules and have personal knowledge that Choctaw Telephone Company is in compliance with the Commission's CPNI rules. Choctaw Telephone Company is a 100% owned subsidiary of Townes Telecommunications, Inc. Townes Telecommunications, Inc. has established a CPNI Policy Manual that applies to each of its subsidiary telecommunications companies. A copy of the Townes Telecommunications, Inc. CPNI Policy Manual is available for review by company subscribers or entity with appropriate jurisdiction.

Signed: Deborah Nobles

Title: Vice President of Regulatory Affairs

Dated: January 31, 2006

**CERTIFICATION OF CPNI FILING**

**FEBRUARY 6, 2006**

**[Section 64-2009(e) of FCC Rules]**

**EB-06-TC-060**

**EB DOCKET NO. 06-36**

I, Deborah Nobles, Vice President of Regulatory Affairs, am a corporate officer of Electra Telephone Company. Pursuant to 47 CFR, Part 64.2009(e), I hereby state I am responsible for Electra Telephone Company's compliance with the FCC's CPNI rules and have personal knowledge that Electra Telephone Company is in compliance with the Commission's CPNI rules. Electra Telephone Company is a 100% owned subsidiary of Townes Telecommunications, Inc. Townes Telecommunications, Inc. has established a CPNI Policy Manual that applies to each of its subsidiary telecommunications companies. A copy of the Townes Telecommunications, Inc. CPNI Policy Manual is available for review by company subscribers or entity with appropriate jurisdiction.

Signed: Deborah Nobles

Title: Vice President of Regulatory Affairs

Dated: January 31, 2006

# **CERTIFICATION OF CPNI FILING**

**FEBRUARY 6, 2006**

**[Section 64-2009(e) of FCC Rules]**

**EB-06-TC-060**

**EB DOCKET NO. 06-36**

I, Deborah Nobles, Vice President of Regulatory Affairs, am a corporate officer of Haxtun Telephone Company. Pursuant to 47 CFR, Part 64.2009(e), I hereby state I am responsible for Haxtun Telephone Company's compliance with the FCC's CPNI rules and have personal knowledge that Haxtun Telephone Company is in compliance with the Commission's CPNI rules. Haxtun Telephone Company is a 100% owned subsidiary of Townes Telecommunications, Inc. Townes Telecommunications, Inc. has established a CPNI Policy Manual that applies to each of its subsidiary telecommunications companies. A copy of the Townes Telecommunications, Inc. CPNI Policy Manual is available for review by company subscribers or entity with appropriate jurisdiction.

Signed: Deborah Nobles

Title: Vice President of Regulatory Affairs

Dated: January 31, 2006

# **CERTIFICATION OF CPNI FILING**

**FEBRUARY 6, 2006**

**[Section 64-2009(e) of FCC Rules]**

**EB-06-TC-060**

**EB DOCKET NO. 06-36**

I, Deborah Nobles, Vice President of Regulatory Affairs, am a corporate officer of MoKan Dial, Inc. and it's subsidiary, MoKan Communications. Pursuant to 47 CFR, Part 64.2009(e), I hereby state I am responsible for MoKan Dial, Inc.'s compliance with the FCC's CPNI rules and have personal knowledge that MoKan Dial, Inc. is in compliance with the Commission's CPNI rules. MoKan Dial, Inc. is a 100% owned subsidiary of Townes Telecommunications, Inc. Townes Telecommunications, Inc. has established a CPNI Policy Manual that applies to each of its subsidiary telecommunications companies. A copy of the Townes Telecommunications, Inc. CPNI Policy Manual is available for review by company subscribers or entity with appropriate jurisdiction.

Signed: 

Title: Vice President of Regulatory Affairs

Dated: January 31, 2006

# **CERTIFICATION OF CPNI FILING**

**FEBRUARY 6, 2006**

**[Section 64-2009(e) of FCC Rules]**

**EB-06-TC-060**

**EB DOCKET NO. 06-36**

I, Deborah Nobles, Vice President of Regulatory Affairs, am a corporate officer of Northeast Florida Telephone Company. Pursuant to 47 CFR, Part 64.2009(e), I hereby state I am responsible for Northeast Florida Telephone Company's compliance with the FCC's CPNI rules and have personal knowledge that Northeast Florida Telephone Company is in compliance with the Commission's CPNI rules. Northeast Florida Telephone Company is a 100% owned subsidiary of Townes Telecommunications, Inc. Townes Telecommunications, Inc. has established a CPNI Policy Manual that applies to each of its subsidiary telecommunications companies. A copy of the Townes Telecommunications, Inc. CPNI Policy Manual is available for review by company subscribers or entity with appropriate jurisdiction.

Signed: Deborah Nobles

Title: Vice President of Regulatory Affairs

Dated: January 31, 2006

**CERTIFICATION OF CPNI FILING**

**FEBRUARY 6, 2006**

**[Section 64-2009(e) of FCC Rules]**

**EB-06-TC-060**

**EB DOCKET NO. 06-36**

I, Deborah Nobles, Vice President of Regulatory Affairs, am a corporate officer of Northeast Florida Long Distance d/b/a NEFCOM Communications. Pursuant to 47 CFR, Part 64.2009(e), I hereby state I am responsible for NEFCOM Communications' compliance with the FCC's CPNI rules and have personal knowledge that NEFCOM Communications is in compliance with the Commission's CPNI rules. NEFCOM Communications is a 100% owned subsidiary of Townes Telecommunications, Inc. Townes Telecommunications, Inc. has established a CPNI Policy Manual that applies to each of its subsidiary telecommunications companies. A copy of the Townes Telecommunications, Inc. CPNI Policy Manual is available for review by company subscribers or entity with appropriate jurisdiction.

Signed: Deborah Nobles

Title: Vice President of Regulatory Affairs

Dated: January 31, 2006



**CERTIFICATION OF CPNI FILING**

**FEBRUARY 6, 2006**

**[Section 64-2009(e) of FCC Rules]**

**EB-06-TC-060**

**EB DOCKET NO. 06-36**

I, Deborah Nobles, Vice President of Regulatory Affairs, am a corporate officer of Tatum Telephone Company. Pursuant to 47 CFR, Part 64.2009(e), I hereby state I am responsible for Tatum Telephone Company's compliance with the FCC's CPNI rules and have personal knowledge that Tatum Telephone Company is in compliance with the Commission's CPNI rules. Tatum Telephone Company is a 100% owned subsidiary of Townes Telecommunications, Inc. Townes Telecommunications, Inc. has established a CPNI Policy Manual that applies to each of its subsidiary telecommunications companies. A copy of the Townes Telecommunications, Inc. CPNI Policy Manual is available for review by company subscribers or entity with appropriate jurisdiction.

Signed: Deborah Nobles

Title: Vice President of Regulatory Affairs

Dated: January 31, 2006

**CERTIFICATION OF CPNI FILING**

**FEBRUARY 6, 2006**

**[Section 64-2009(e) of FCC Rules]**

**EB-06-TC-060**

**EB DOCKET NO. 06-36**

I, Deborah Nobles, Vice President of Regulatory Affairs, am a corporate officer of Walnut Hill Telephone Company. Pursuant to 47 CFR, Part 64.2009(e), I hereby state I am responsible for Walnut Hill Telephone Company's compliance with the FCC's CPNI rules and have personal knowledge that Walnut Hill Telephone Company is in compliance with the Commission's CPNI rules. Walnut Hill Telephone Company is a 100% owned subsidiary of Townes Telecommunications, Inc. Townes Telecommunications, Inc. has established a CPNI Policy Manual that applies to each of its subsidiary telecommunications companies. A copy of the Townes Telecommunications, Inc. CPNI Policy Manual is available for review by company subscribers or entity with appropriate jurisdiction.

Signed: Deborah Nobles

Title: Vice President of Regulatory Affairs

Dated: January 31, 2006

Townes Telecommunications, Inc.  
Customer Proprietary Network Information  
(CPNI)  
Policy Manual

July 1999

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## **Customer Proprietary Network Information (CPNI)**

### **Overview**

Section 222 of the Telecommunications Act of 1996 (TA96) established CPNI requirements for all telecommunications carriers. The requirements are meant to protect telecommunications customers' right to privacy with regard to information they view as sensitive and personal. Carriers obtain this information by virtue of the relationship they have with their customers. This sensitive and commercially valuable information includes, for example, when a customer places a call, whom and where a customer calls, and the types of service offerings to which a customer subscribes. TA96 directed the Federal Communications Commission (FCC) to enact rules governing carriers' use and disclosure of CPNI. Those rules are contained in §64,2003 – .2009 of the FCC rules.

The FCC rules permit carriers to use CPNI without customer approval to market offerings related to the customer's existing service relationship with the carrier. In other words, if a customer subscribes to a carrier's local service, but not its long distance service, the carrier may use the customer's CPNI to market offerings related to local service, but not long distance service. For example, the carrier may use information about the customer's local phone usage to market local service features such as Caller ID and Call Forwarding but not to market long distance service. The FCC found this "total service approach" offers convenience for the customer while preventing the use of CPNI in ways that the customer would not expect.

Before carriers may use CPNI to market service outside the customer's existing service relationship, carriers must obtain customer approval. Such approval may be written, oral, or electronic. In order to ensure that customers are informed of their statutory rights before granting approval, carriers are further required to provide a one-time notification of customer's CPNI rights prior to any solicitation for approval.

This manual outlines the procedures Townes Telecommunications, Inc. has implemented to comply with all of the FCC rules and regulations. In addition, it details the Company's policy on the proper use of CPNI by employees and the disciplinary process that will apply in cases of unauthorized use of CPNI. Finally, this manual addresses state CPNI rules and regulations

## **CPNI Policy**

Townes Telecommunications, Inc. has established this policy on the use or abuse of Customer Proprietary Network Information (CPNI) by its employees. This policy is established in response to 47 CFR Part 64, Subpart U of the Federal Communications Commission Rules.

The FCC has identified the potential for using customer information in ways that could be invasive of customer privacy and has published rules that govern specific uses of customer information by telecommunications companies. CPNI is the term for the information that can be gathered and used by telecommunications companies. The FCC defines CPNI as

“.....information that relates to the quantity, technical configuration, type, destination and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange or toll service received by a customer of a carrier.”

Under federal law, Townes Telecommunications, Inc. has a duty to protect the confidentiality of its customers' CPNI. To protect the privacy of its customers, Townes Telecommunications, Inc. has elected to prohibit the use of CPNI by its employees for use in marketing services outside of the customer's existing service relationship. Employees will be trained to understand when they can and cannot access or use customers' CPNI. Employees that deviate from this CPNI policy will be subject to disciplinary actions.

## **Supervisory Review Process**

### **Compliance Officer**

The federal CPNI rules require every company to designate a CPNI compliance officer that on a yearly basis certifies that the company is in compliance with the CPNI regulations. In addition, the compliance officer must review all marketing plans to assure compliance with federal CPNI regulations.

Townes Telecommunications, Inc. has designated the Vice President of Regulatory Affairs as the CPNI compliance officer. By January 31 of each year, the compliance officer will issue a CPNI certification for each of the telecommunications companies in the Townes Telecommunications system. The certification will provide support that each company is in compliance with the CPNI rules. A copy of the certification must be made publicly available in the business office of the telecommunications companies.

### **Review Process**

In order for the compliance officer to have personal knowledge of the company's compliance with the CPNI rules, Townes Telecommunications, Inc. has implemented the following review process:

- The CPNI Compliance Officer must approve all marketing plans developed by company employees on behalf of the company.
- The CPNI Compliance Officer must approve any requests by sales personnel to use CPNI for outbound marketing purposes to ensure that the proper authorization has been received from the customer prior to any marketing contacts are made.
- The CPNI Compliance Officer will ensure that all employees are trained in the use of CPNI and understand the disciplinary actions that will apply for employees that misuse CPNI

### **Employee CPNI Policies**

Every employee of Townes Telecommunications, Inc. and its subsidiary telecommunications companies will have access to Townes CPNI Policy Manual.

## **CPNI Procedures**

### **What is CPNI?**

CPNI includes such information as to where and when a customer places a call, the types of services to which the customer subscribes and how often the service is used.

For clarification:

- CPNI does NOT include published directory information such as customer's name, address and telephone number, as well as any information that is available in the public domain or from any other, non-company source.
- Customer Premises Equipment (CPE) and information services are not considered "telecommunications services." These services are therefore not regulated by CPNI rules.
- Since customer information derived from sales of CPE is not considered CPNI, this information may be used to market CPE and information services to customers in conjunction with bundled offerings that may include telecommunications services.
- CPNI regulations only apply to the use of that information for marketing purposes.

*For instance (from the FCC Order):*

*The Company can contact all of its customers or all of its former customers, for marketing purposes, by using a customer list that contains each customers name, address and telephone number, so long as it does not use CPNI to select a subset of customers from that list.*

### **What is the Total Service Approach?**

The FCC has adopted an approach to protect customer proprietary network information based on the **services** to which a customer subscribes with any particular company. This is called the "total service approach." This approach permits the use of proprietary information for marketing of telecommunications services, depending on the "existing service relationship" between a customer and the carrier.

Simply stated, a carrier is allowed to use the customer's entire record for marketing purposes within the scope of those particular services to which a customer already subscribes. The carrier may use that information to market products and services that are directly related to those particular services, but only those services.



- The company may NOT use the customer's proprietary information to market products and services to which the customer does not subscribe.
- CPNI may only be used to market services directly related to those services to which that customer already subscribes.
- CPNI may not be used to market the full range of product offerings of the carrier unless the customer subscribes to all of those services.

If a company wants to use the customer's proprietary information to market services outside of the "existing service relationship" between the customer and the company, this may be done ONLY if the customer has given the company authorization to do so.

*For instance (FCC Example):*

*A carrier whose customer subscribes to a service that includes a combination of local and Commercial Mobile Radio Service (CMRS), would be able to use the CPNI derived from the customer's services to market to that customer all related and enhanced offerings, but not to market long distance service (for example) to that customer, because the customer's present service excludes any long distance component.*

### **When Can CPNI Be Used Without Customer Approval?**

Section 222(c)(1) of the FCC's CPNI rules describes the circumstances when carriers can use, disclose or permit access to CPNI without first obtaining customer approval. Carriers are permitted to use CPNI without customer approval to market improvements or service enhancements that are related to the customer's existing services.

For instance, if a customer subscribes to a carrier's local exchange services but not its long distance service, the carrier could use any existing information about that customer to market new products, service enhancements, or other improvements related to the local exchange service, without any additional customer approval. However, before a carrier may use CPNI to market a service that is outside of the customer's existing service relationship, in this example the long distance service, a carrier is required to obtain express customer approval to use this information.

In addition, a carrier can obtain and use CPNI without customer approval:

- to bill and collect for telecommunications services;
  - to protect the rights or property of the carrier;
  - to protect users of those services from unlawful or fraudulent use of these services;
-

- to provide any marketing of services in response to an inbound call from the customer;
- to provision inside wiring installation, maintenance and repair services.

### **When Is Customer Approval Needed Prior to Using CPNI?**

The FCC has determined that carriers may not use CPNI without first getting customer approval to market services that fall outside the scope of the customer's "existing service relationship" with the company.

- Carriers may not use CPNI, without first obtaining customer approval, to market any service that the customer **presently** does not purchase from that provider including non-telecommunications services, such as CPE and information services. (See clarification below regarding the use of CPNI associated with customers who have an existing service relationship with the carrier for CPE and information services.)
- A company may market products related to only those telecommunications services to which a customer presently subscribes, whether or not those services are provided by a single company or an affiliated company. If a company wants to use CPNI to market additional telecommunications services, then customer approval is necessary.
- If an affiliate wants to market new products or services to a customer based on the CPNI of the individual customer, and the customer is **not** a subscriber of that affiliate, then the carrier must get customer approval to use CPNI.
- If a customer has not purchased CPE or information services from the carrier that is providing its telecommunications services, the carrier would be subsequently prohibited from using CPNI to market CPE and information services without prior customer approval.

**Remember:** Customer information derived from the provisioning of any non-telecommunications service, such as CPE or information services, is not covered by Section 222(c)(1). This information is not considered CPNI and, therefore, it may be used to provide or market any telecommunications service regardless of telecommunications service categories or customer approval. Therefore, it is not necessary to get customer authorization for the use of any CPNI that comes from the sale of CPE or the provisioning of information services.

### **Use of CPNI in Company Marketing Plans**

It is the protection of customers' privacy, specifically the use of customer information in marketing new services or products that the FCC has addressed in these CPNI rules. Essentially, every company must determine whether the company's marketing plans protect the customer's privacy in its use of the customer's proprietary information according to the guidelines set forth by the FCC.

Marketing plans that are not customer-specific, or are addressed to random individuals, do not use CPNI and are, therefore, not affected by CPNI regulations. Marketing plans are not in compliance with the CPNI rules when the company uses the **individual's** customer information to target market new services and products, and the services and products are NOT related to those to which the customer presently subscribes.

It is possible to sue CPNI to develop marketing plans **without** customer notifications or authorization when:

- An employee responds to a customer inquiry regarding existing services to which they currently subscribe.
- The company intends to market any service the company offers currently or in the future to ALL current customers, or any randomly selected group of customers.
- The company uses customer information from "information services." This includes such services as call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward and Internet access services. These are services that are provided to consumers independently of their telecommunications service and are not necessarily to the provision of the customer's telecommunications service.

In addition, all companies, whether or not they use CPNI in marketing services, must have a review process in place to be in compliance with the FCC's CPNI regulations.

### **How Can the Company Use CPNI in Bundled Service Offerings?**

The FCC does not prohibit carriers from bundling services that they are otherwise able to bundle under the Communications Act or other Commission's rules. It also notes that:

*"customer information derived from the provision of any non-telecommunications service, such as CPE or information services, may be used to provide or market any telecommunications service regardless of telecommunications service categories or customer approval."*

Specifically, when a customer purchases CPE or an information service from a carrier and these services are bundled with a telecommunications service, the carrier may later use any customer information independently derived from the carrier's prior sale in its marketing of new CPE or any similar information service that is bundled with a telecommunications service. For instance, if a company sells a bundle of services that includes a telecommunications services and Internet access service, the information from the sale of the telecommunications services and Internet access service can be used for future marketing of other bundled plans.

- In situations where the bundling of a telecommunications service with CPE, information services or other non-telecommunications services is permissible, a carrier may use CPNI to target particular customers in a manner consistent with Commission orders.
- A carrier may also use the customer information independently derived from the prior sale of the CPE, the customer's subscription to a particular information service, or the carrier's provision of other non-telecommunications offerings to market its bundled offering.

#### *FCC Example:*

*A CMRS provider could use CMRS-derived CPNI to target its high-usage analog wireless customers to offer them new digital wireless service plans IF such an analog customer had also previously purchased a CMRS handset or an information service, such as voice mail, as part of a bundled offering from the carrier. In this case, the carrier would have access to information concerning the customer's purchase of the carrier's CPE and information service that is independent from the CPNI derived from the provision of the CMRS service.*

*Consistent with the "total service approach," the carrier could use such customer information to market new digitally compatible CPE and new voice mail service in conjunction with the offering of new digital wireless service in a single contact with the customer without first obtaining the customer's approval.*

---

- Only where CPE or information service is part of a bundled offering, including a telecommunications service, and the carrier is the existing CPE or information service provider, could the carrier use CPNI to market a new bundled offering that includes new CPE or similar information services.
- A carrier is permitted to use CPNI without customer approval, only in the provision of the telecommunications service from which such information is derived.

*FCC Example:*

*A carrier could not use CPNI to select certain high-usage customers to whom they also sold telephones, and then market only new CPE that is not part of a new bundled plan*

- Where a customer has not purchased CPE or information services from the carrier that is providing its telecommunications services, the carrier would be subsequently prohibited from using CPNI to market a bundled offering of CPE or information services with telecommunications services to that customer without customer approval.
- Only where CPE or an information service is part of a bundled offering, including a telecommunications service, and the carrier is the existing CPE or information service provider, could the carrier use CPNI to market a new bundled offering that includes a new CPE or similar information services without obtaining customer approval.

**CPNI Notification and Reporting Requirements**

ALL companies, regardless of plans to use CPNI for marketing purposes, must comply with CPNI regulations. To comply, each company must do the following:

- Have a compliance officer annually certify that the company is in compliance with the FCC CPNI regulations. The CPNI compliance officer can be any company official or manager selected to have an on-going role in reviewing all marketing plans for CPNI compliance.
- Have a signed corporate certification, publicly available, that indicates compliance with the FCC CPNI regulations.

- Send a one-time notice to customers informing them about the FCC CPNI policy and their right to restrict carrier use of CPNI. This notification must provide sufficient information to enable the customer to make an informed decision to permit a carrier to use, disclose, or permit access to CPNI.

#### **Customer Notification Authorizing the Use of CPNI**

Companies that intend to use CPNI for marketing purposes must get a one-time authorization from the customer to use that information. However, Townes Telecommunications, Inc. has elected to not use CPNI for marketing services to specific customers that its subsidiary companies do not already have an existing service relationship with that customer for related services or does not have a relationship with that customer for CPE or information services.

#### **Customer Authorization to Release CPNI to a Third Party**

If a customer wants to allow a third party, such as a Competitive Local Exchange Company, to have access to his/her CPNI, authorization to release the CPNI must be given to the company who presently has that information.

## APPENDIXES RULES AND REGULATIONS

## **APPENDIX A**



## **Subpart U - Customer Proprietary Network Information.**

### **§ 64.2001 Basis and purpose.**

(a) *Basis.* The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this subpart is to implement section 222 of the Communications Act of 1934, as amended, 47 U.S.C. § 222.

**Chronology:** Adopted: 02/26/98, amended: 07/25/02

### **§ 64.2003 Definitions.**

Terms in this subpart have the following meanings:

(a) *Affiliate.* The term "affiliate" has the same meaning given such term in § 3(1) of the Communications Act of 1934, as amended, 47 U.S.C. 153(1).

(b) *Communications-related services.* The term "communications-related services" means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.

(c) *Customer.* A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

(d) *Customer proprietary network information (CPNI).* The term "customer proprietary network information (CPNI)" has the same meaning given to such term in section 222(h)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 222(h)(1).

(e) *Customer premises equipment (CPE).* The term "customer premises equipment (CPE)" has the same meaning given to such term in section 3(14) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(14).

(f) *Information services typically provided by telecommunications carriers.* The phrase "information services typically provided by telecommunications carriers" means only those information services (as defined in section 3(20) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(2)) that are typically provided by telecommunications carriers, such as Internet access or voice mail services. Such phrase "information services typically provided by telecommunications carriers," as used in this subpart, shall not include retail consumer services provided using Internet websites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services.

(g) *Local exchange carrier (LEC).* The term "local exchange carrier (LEC)" has the same meaning given to such term in section 3(26) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(26).

### § 64.2003 Definitions. (Cont'd)

(h) *Opt-in approval*. The term "opt-in approval" refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. This approval method requires that the carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request consistent with the requirements set forth in this subpart.

(i) *Opt-out approval*. The term "opt-out approval" refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within the waiting period described in Sec. 64.2009(d)(1) after the customer is provided appropriate notification of the carrier's request for consent consistent with the rules in this subpart.

(j) *Subscriber list information (SLI)*. The term "subscriber list information (SLI)" has the same meaning given to such term in section 222(h)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 222(h)(3).

(k) *Telecommunications carrier or carrier*. The terms "telecommunications carrier" or "carrier" shall have the same meaning as set forth in section 3(44) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(44).

(l) *Telecommunications service*. The term "telecommunications service" has the same meaning given to such term in section 3(46) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(46).

**Chronology:** Adopted: 02/26/98, amended: 07/25/02

### § 64.2005 Use of customer proprietary network information without customer approval.

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (*i.e.*, local, interexchange, and CMRS) to which the customer already subscribes from the same carrier, without customer approval.

(1) If a telecommunications carrier provides different categories of service, and a customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI with its affiliates, except as provided in § 64.2007(b).

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the subscriber does not already subscribe from that carrier, unless that carrier has customer approval to do so, except as described in paragraph (c) of this section.

**§ 64.2005 Use of customer proprietary network information without customer approval. (Cont'd)**

(1) A wireless provider may use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s). A wireline carrier may use, disclose or permit access to CPNI derived from its provision of local exchange service or interexchange service, without customer approval, for the provision of CPE and call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and protocol conversions.

(2) A telecommunications carrier may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.

(c) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, as described in this paragraph (c).

(1) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(2) CMRS providers may use, disclose, or permit access to CPNI for the purpose of conducting research on the health effects of CMRS.

(3) LECs and CMRS providers may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

(d) A telecommunications carrier may use, disclose or permit access to CPNI to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

**Chronology:** Adopted: 02/26/98, amended: 09/03/99, 07/25/02

**§ 64.2007 Approval required for use of customer proprietary network information.**

(a) A telecommunications carrier may obtain approval through written, oral or electronic methods.

(1) A telecommunications carrier relying on oral approval shall bear the burden of demonstrating that such approval has been given in compliance with Commission's rules in this part.

(2) Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecommunications carrier must remain in effect until the customer revokes or limits such approval or disapproval.

(3) A telecommunications carrier must maintain records of approval, whether oral, written or electronic, for at least one year.

(b) *Use of Opt-Out and Opt-In Approval Processes.*

**§ 64.2007 Approval required for use of customer proprietary network information. (Cont'd)**

(1) A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to (i) its agents, (ii) its affiliates that provide communications-related services, and (iii) its joint venture partners and independent contractors. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. Any such disclosure to or access provided to joint venture partners and independent contractors shall be subject to the safeguards set forth in paragraph (b)(2) of this section.

(2) *Joint Venture/Contractor Safeguards.* A telecommunications carrier that discloses or provides access to CPNI to its joint venture partners or independent contractors shall enter into confidentiality agreements with independent contractors or joint venture partners that comply with the following requirements. The confidentiality agreement shall: (i) Require that the independent contractor or joint venture partner use the CPNI only for the purpose of marketing or providing the communications-related services for which that CPNI has been provided; (ii) Disallow the independent contractor or joint venture partner from using, allowing access to, or disclosing the CPNI to any other party, unless required to make such disclosure under force of law; and (iii) Require that the independent contractor or joint venture partner have appropriate protections in place to ensure the ongoing confidentiality of consumers' CPNI.

(3) Except for use and disclosure of CPNI that is permitted without customer approval under section 64.2005, or that is described in paragraph (b)(1) of this section, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

(c) A telecommunications carrier relying on oral approval must bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules.

(d) Approval obtained by a telecommunications carrier for the use of CPNI outside of the customer's total service relationship with the carrier must remain in effect until the customer revokes or limits such approval.

(e) A telecommunications carrier must maintain records of notification and approval, whether oral, written or electronic, for at least one year.

(f) Prior to any solicitation for customer approval, a telecommunications carrier must provide a one-time notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(1) A telecommunications carrier may provide notification through oral or written methods.

(2) Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose or permit access to, the customer's CPNI.

**§ 64.2007 Approval required for use of customer proprietary network information. (Cont'd)**

(i) The notification must state that the customer has a right, and the carrier a duty, under federal law, to protect the confidentiality of CPNI.

(ii) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(iii) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes.

(iv) The notification must be comprehensible and not be misleading.

(v) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(vi) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(vii) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(viii) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third party access to CPNI.

(ix) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes to from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(3) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(4) [Removed]

**Chronology:** Adopted: 02/26/98, amended: 09/03/99, 07/25/02

**§ 64.2008 notice required for use of customer proprietary network information.**

(a) *Notification, Generally.*

(1) Prior to any solicitation for customer approval, a telecommunications carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

**§ 64.2008 Notice required for use of customer proprietary network information. (Cont'd)**

(2) A telecommunications carrier must maintain records of notification, whether oral, written or electronic, for at least one year.

(b) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) *Content of Notice.* Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

(1) The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.

(2) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(3) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) The notification must be comprehensible and must not be misleading.

(5) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(7) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(8) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.

(9) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(10) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

**§ 64.2008 Notice required for use of customer proprietary network information. (Cont'd)**

(d) *Notice Requirements Specific to Opt-Out.* A telecommunications carrier must provide notification to obtain opt-out approval through electronic or written methods, but not by oral communication (except as provided in paragraph (f) of this section). The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(1) Carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A carrier may, in its discretion, provide for a long period. Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

(i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

(ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) Carriers using the opt-out mechanism must provide notices to their customers every two years.

(3) Telecommunications carriers that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

(i) Carriers must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their services in general, or CPNI in particular;

(ii) Carriers must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

(iii) Opt-out e-mail notices that are returned to the carrier as undeliverable must be sent to the customer in another form before carriers may consider the customer to have received notice; and

(iv) Carriers that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and

(v) Telecommunications carriers must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

**(e) *Notice of Requirements Specific to Opt-In***

(1) A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of paragraph (c) of this section.

**§ 64.2008 Notice required for use of customer proprietary network information. (Cont'd)**

(f) *Notice Requirements Specific to One-Time Use of CPNI.* Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.

(1) The contents of any such notification must comply with the requirements of paragraph (c) of this section, except that telecommunications carriers may omit any of the following notice provisions if not relevant to the limited use for which the carrier seeks CPNI:

(i) Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

(ii) Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

(iii) Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use; and

(iv) Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

**Chronology:** Adopted: 07/25/02

**§ 64.2009 Safeguards required for use of customer proprietary network information.**

(a) Telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI.

(b) Telecommunications carriers must train their personnel as to when they are, and are not, authorized to use CPNI, and carriers must have an express disciplinary process in place.

(c) All carriers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All carriers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Carriers shall retain the record for a minimum of one year.

(d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.



**§ 64.2009 Safeguards required for use of customer proprietary network information. (Cont'd)**

(e) A telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is, or is not, in compliance with the rules in this subpart.

(f) Carriers must provide written notice within five business days to the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

(1) The notice shall be in the form of a letter, and shall include the carrier's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified and whether it has taken any action, a copy of the notice provided to customers, and contact information.

(2) Such notice must be submitted even if the carrier offers other methods by which consumers may opt-out.

**Chronology:** Adopted: 02/26/98, amended: 09/03/99, 07/25/02

(68 Fed. Reg. 19152 and 19176 (2003)) which modified the slamming rules, the FCC had expanded verification requirements to apply to customer-related long distance carrier change requests. This *Order* clarified that verification by a LEC was required only when the customer-initiated long distance carrier change involved the LEC or an affiliate of the LEC. Customer-initiated changes that did not involve the LEC or its long distance affiliate remained exempt from verification requirements. Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, **Order**, 18 FCC Rcd 10997(2003).

### **Customer Proprietary Network Information**

02/26/98 FCC promulgated regulations to implement statutory obligations of § 222 regarding CPNI, to review existing CPNI regulations, and resolve CPNI issues raised in other proceedings that had been deferred to this proceeding. The Commission amended § 64.702 and added Subpart U (consisting of §§ 64.2001, 64.2003, 64.2005, 64.2007 and 64.2009). Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115 and 96-149, **Second Report and Order and Further Notice of Proposed Rulemaking**, 13 FCC Rcd 8061 (1998). Effective 05/26/98.

08/16/99 The FCC clarified the total service approach and also retained the opt-in approach. In particular, the Commission expanded § 64.2005 of its rules, which codified the total service approach, to include customer premises equipment and some information services. Implementation of the Telecommunications act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket Nos. 96-115 and 96-149, **Order on Reconsideration and Petitions For Forbearance**, 14 FCC Rcd 14409 (1999). Effective 03/02/00.

08/18/99 The U.S. Court of Appeals, 10<sup>th</sup> Circuit, vacated the FCC's 1998 *CPNI Order* and the regulations adopted in that order, concluding that the FCC failed to adequately consider the constitutional ramifications of 47 U.S.C. § 222 and that the FCC's regulations violated the First Amendment because the Commission failed to satisfy its burden of showing that customer approval regulations restricted no more speech than necessary to serve asserted state interests. **U.S. West, Inc. v. FCC**, 182 F.3d 1224 (10<sup>th</sup> Cir. 1999).

09/03/99 FCC amended §§ 64.2005(b)(1), and 64.2009; removed §§ 64.2005(b)(3) and 64.2007(f)(4); and added § 64.2005(d) to preserve consumer protections, while more narrowly tailoring the rules to enable telecommunications carriers to comply with the law in a more flexible and less costly manner. The Commission: declined to modify or forbear from the total service approach; allowed carriers to use CPNI to market customer premises equipment; eliminated the restrictions on a carrier's ability to use CPNI to regain customers who had switched to another carrier; and lessened the regulatory burden on various CPNI

safeguards clarified. The Commission Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, CC Docket No. 96-149, **Order on Reconsideration and Petitions for Forbearance**, 14 FCC Rcd 14409 (1999). Effective 03/02/00.

09/07/01 FCC clarified the status of the Commission's CPNI rules after the 10th Circuit's opinion and expanded how parties may obtain customer consent for use of their CPNI. Concluded that the 10th Circuit sought to eliminate only the specific section of the rules that was before it, § 64.2007(c), the only provision inextricably tied to the opt-in mechanism. The FCC determined that the remainder of the CPNI rules remained in effect. Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Non-Accounting safeguards of Sections 271 and 272 of the Communications Act of 1934, CC Docket Nos. 96-115 and 96-149, **Clarification Order and Further Notice of Proposed Rulemaking**, 16 FCC Rcd 16506 (2001). Effective 11/22/01.

07/25/02 The Commission amended §§ 64.2001, 64.2003, 64.2005, 64.2007, 64.2008 and 64.2009 of its rules resolving how telecommunications companies share and market CPNI. Commission adopted a dual approach wherein carriers could choose to either opt-in or opt-out. For use of CPNI by carriers or their affiliated entities providing telecommunications services, the Commission required knowing consent in the form of notice and opt-out approval. Disclosure of CPNI to unrelated third parties or to carrier affiliates that did not provide telecommunications related services would require express written consent, or opt-out approval. Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket Nos. 96-115, 96-149, 00-257, **Third Report and Order and Third Further Notice of Proposed Rulemaking**, 17 FCC Rcd 14860 (2002). Effective 10/21/02 except for §§ 64.2007, 64.2008 and 64.2009 were effective 02/24/03.

### **Expanded Interconnection**

10/19/92 FCC adopted measures to promote increased competition in the interstate access market by requiring that Tier 1 LECs offer expanded interconnection to all interested parties for special access and permitting competitors and high volume users to terminate their own access transmission facilities at LEC central offices. The Commission added Subpart N (consisting of §§ 64.1401 and 64.1402); and amended § 61.38, 61.47, 61.49, 65.702, 69.4, 69.121, 69.122, and 69.123. Expanded Interconnection with Local Telephone Company Facilities and Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket Nos. 91-141 and 92-222, **Report and Order and Notice of Proposed Rulemaking**, 7 FCC Rcd 7369 (1992). Effective 02/16/93.

## **APPENDIX B**

## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

### Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

#### §26.122. Customer Proprietary Network Information (CPNI).

- (a) **Application.** This section applies to all certificated telecommunications utilities (CTUs) as defined in §26.5 of this title (relating to Definitions).
- (b) **Purpose.** The purpose of this section is to delineate the circumstances in which CTUs are required to gain approval of the customer prior to using, disclosing, or permitting access to customer-specific customer proprietary network information (CPNI), and to set forth the requisites for obtaining customer notification and approval. This section is intended to be consistent with the federal Telecommunications Act of 1996 §222 in balancing competitive and consumer privacy interests with respect to customer-specific CPNI.
- (c) **Customer approval not required.** A CTU may use, disclose, or permit access to customer-specific CPNI, without customer approval, as described in this subsection.
  - (1) **Generally.** Any CTU may use, disclose, or permit access to customer-specific CPNI for the purpose of providing or marketing service offerings, or alternate versions of existing service, which may include additional or related offerings, within the category of service (*i.e.*, local, interexchange) already subscribed to by the customer from the same utility, without customer approval. Any CTU may use, disclose, or permit access to customer-specific CPNI for the purpose of providing optional extended area calling plans that a CTU may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests and §26.219 of this title (relating to Administration of Expanded Local Calling Service Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act §§53.101-53.113, 53.151, 53.152, 53.201, 53.202, 53.251, 53.252, 53.301, and 53.303-53.307.
  - (2) **Customer premises equipment (CPE) and information services.** A CTU may use, disclose, or permit access to customer-specific CPNI derived from its provision of local exchange service or interexchange service to their customers to separately market CPE and information services, including call answering, voice mail or messaging, voice storage and retrieval services, fax storage and retrieval services, and protocol conversions.
  - (3) **Winback.** A CTU may use CPNI to regain the business of customers who have switched to and are receiving service from another provider. The CTU may only use the former customer's CPNI to engage in "winback" marketing campaigns to regain that customer's service within the same category of service from which the CPNI was obtained. Section 222 of the FTA does not allow carriers to use CPNI to retain soon-to-be former customers where the carrier gained notice of a customer's imminent cancellation of service through the provision of carrier-to-carrier service.
  - (4) **Affiliates.** If an affiliate telecommunications utility provides different categories of service, and a customer subscribes to more than one category of service offered by the CTU and/or its affiliate, the CTU is permitted to share customer-specific CPNI only to those affiliated entities that provide a service offering to the customer. If a customer does not subscribe to service from an affiliate the CTU is not permitted to share customer-specific CPNI with its affiliated entities, absent customer approval.
  - (5) **Customer's right to restrict CPNI.** Even though customer approval is not required for situations set forth in paragraphs (1) — (4) of this subsection, a customer may notify the CTU that such customer restricts the use of, disclosure of, and access to that customer's specific CPNI for use in the situations described in paragraphs (1) — (4) of this subsection.

## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

### Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

#### §26.122(c) continued

- (6) **Exceptions.** Nothing in this section prohibits a CTU from using, disclosing, or permitting access to customer-specific CPNI obtained from its customers, either directly or indirectly:
  - (A) to provide inside wiring installation, maintenance, or repair services;
  - (B) to initiate, render, bill for, or collect for customer-authorized telecommunications services;
  - (C) to protect the rights or property of the utility, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;
  - (D) to market services other than those to which a customer already subscribes, or alternate versions of existing service, which may include additional or related offerings, if such customer contacts the CTU to inquire about such services offered by the CTU; or
  - (E) to conduct research on the health effects of commercial mobile radio services (CMRS).
- (d) **Customer approval required.**
  - (1) Except as described in subsection (c) of this section, a CTU may not use, disclose, or permit access to customer-specific CPNI, without customer approval, for the following:
    - (A) to market to a customer service offerings that are within a category of service to which the customer does not already subscribe from that CTU, unless the CTU has customer approval to do so;
    - (B) to provide Internet access; or
    - (C) to identify or track customers who call competing service providers.
  - (2) Notwithstanding the requirements of subsection (c)(1) of this section, when a customer purchases CPE or information services from a CTU that are bundled with a telecommunications service, the CTU subsequently may use any customer information independently derived from the CTU's prior sale of CPE to the customer or the customer's subscription to a particular information service offered by the CTU in its marketing of new CPE or a similar information service that is bundled with a telecommunications service.
- (e) **Obtaining customer approval.** A CTU that is required by this section to obtain customer approval to use, disclose, or permit access to customer-specific CPNI to market a customer service to which the customer does not already subscribe from that CTU must do so in compliance with the following requirements of this subsection. Customer approval remains in effect until the customer revokes or limits such approval. Approval obtained before the effective date of this section, if obtained in compliance with Federal Communications Commission (FCC) rules in existence at the time of the approval, shall be valid until the customer revokes or limits such approval.
  - (1) A CTU may obtain approval through written, oral, or electronic methods;
  - (2) A CTU relying on oral approval must bear the burden of demonstrating that such approval has been given in compliance with this section;
  - (3) A CTU must maintain records of notification and approval, whether oral, written, or electronic, for at least one year.

## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

### Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

- (f) **Notification.** Prior to any solicitation for customer approval, a CTU must provide a one-time notification, through oral or written methods, to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.
- (1) **Specific notification requirements.** Customer notification, through either oral or written methods, must provide sufficient information to enable the customer to make an informed decision as to whether to permit a CTU to use, disclose, or permit access to the customer's CPNI. The notification must be comprehensible and not be misleading. If written notification is provided, the notice must be legible and be placed in an area so as to be readily apparent to a customer. In carrying out this provision, the notification must:
- (A) specify the types of information that constitute CPNI, describe the purposes for which CPNI will be used, and inform the customer of the right to disapprove those uses, and deny or withdraw access to CPNI at any time;
  - (B) state that the customer has a right, and the carrier a duty, under federal law, to protect the confidentiality of CPNI; and
  - (C) advise the customer of the precise steps necessary for granting or denying access to CPNI, and clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes.
- (2) **Other notification requirements.** A CTU shall adhere to the following notification specifications:
- (A) If any notification is translated into another language, then all portions of the notification must be translated into that language.
  - (B) A utility may state in the notification that the customer's approval to use customer-specific CPNI may enhance the CTU's ability to offer products and services tailored to the customer's needs.
  - (C) A CTU may not include in the notification any statement attempting to encourage a customer to freeze third party access to customer-specific CPNI.
  - (D) A CTU's solicitation for approval must be proximate in time to the notification of a customer's CPNI rights, and if written, placed in the same envelope in which notification is mailed.
- (3) **Staff review of the notification.** The notification shall be reviewed by the commission's staff before it is distributed. The staff shall notify the CTU within ten days of submission whether the proposed notification may be distributed or must be modified and distributed, and, if so, specifically describe any modifications that staff requires.
- (g) **Safeguards.** Prior to solicitation of a customer's approval, a CTU must establish the following with respect to safeguard provisions for the use of customer-specific CPNI:
- (1) CTUs must implement a system by which the status of a customer's CPNI approval can be clearly established prior to use of the CPNI.
  - (2) CTUs must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place to reprimand personnel who violate CPNI requirements and procedures, as outlined in this section.
  - (3) CTUs must maintain a record, electronically or in some other manner, of their sales and marketing campaigns that use CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, the date and purpose of the campaign, and what products or services were offered as part of the campaign. The CTUs must retain the record for a minimum of one year.

## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

### Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

#### §26.122(g) continued

- (4) CTUs must establish a supervisory review process regarding telecommunications utility compliance with the provisions of the subsection for outbound marketing situations and maintain records of CTU compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request.
- (5) A CTU must have an officer, as an agent of the CTU, sign a compliance certificate on an annual basis stating that the agent has personal knowledge that the operating procedure established by the carrier is in compliance with the commission's CPNI rules. A statement explaining how the CTU is in compliance with the provisions in this subsection must accompany the certificate.
- (h) **Aggregate CPNI.** If a CTU compiles and uses aggregate CPNI for marketing purposes or provides aggregate CPNI to any business associated with the CTU for marketing purposes, it must also provide aggregate CPNI to any third party upon request, except when a local exchange company uses aggregate information only to tailor its service offering to better suit the needs of its existing customers. A CTU must offer to provide aggregate CPNI under the same terms and conditions and at the same price as it is made available to all businesses affiliated with the CTU and to utility personnel marketing supplemental services, provided that the third party must specify the type and scope of the aggregate CPNI requested. A CTU must, upon request, provide such aggregate CPNI to a third party under any other alternative terms, conditions, or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.
- (i) **Subscriber list information.** A CTU that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request, to the extent that such person uses the subscriber list information solely for publishing directories in any format.
- (j) **Definition.** The term "subscriber list information," when used in subsection (i) of this section, means any information:
  - (1) identifying the listed names of subscribers of a CTU and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and
  - (2) that the CTU or an affiliate has published, caused to be published, or accepted for publication in any directory format.